

Testimony of
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House Subcommittee on Telecommunications and the Internet
Committee on Energy & Commerce
U.S. House of Representatives

“How Internet Protocol-Enabled Services are Changing the Face of
Communications: A View from Government Officials”
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Testimony Endorsed by:
American Association of People with Disabilities
American Foundation for the Blind
Association of Late-Deafened Adults
Deaf and Hard of Hearing Consumer Advocacy Network
National Association of the Deaf
Self Help for Hard of Hearing People
Telecommunications for the Deaf, Inc.

Summary of Testimony

As our nation’s communication systems migrate to the Internet, mandates need to be put into place to ensure that people with disabilities have access to the versatile and innovative communication products and services brought to the rest of American society. Fortunately, software-based solutions common to IP-enabled technologies make providing access very achievable. But accessibility solutions need to be incorporated now, at the time that new Internet-enabled technologies are being designed and developed, to avoid expensive, burdensome, and after-the-fact retrofitting.

Additionally, Congress should

- improve the ability of consumers to enforce their rights to communication access;
- reform universal service programs to address the needs of people with disabilities in an IP-enabled environment;
- restore the FCC’s rules on video description;
- extend current closed captioning obligations to IPTV and other modern video programming technologies; and
- allow the states to retain some authority over state-operated telecommunications relay service programs.

WRITTEN STATEMENT OF KAREN PELTZ STRAUSS

Good afternoon, Mr. Chairman, Congressman Markey and members of the Subcommittee. My name is Karen Peltz Strauss, and I am pleased to appear today on behalf of Communication Service for the Deaf, for whom I serve as legal advisor, and the Alliance for Public Technology, for whom I serve on the Board of Directors. In addition, I am privileged to have this testimony endorsed by a number of national organizations that advocate on behalf of people with disabilities, including the American Association of People with Disabilities, the American Foundation for the Blind, Association of Late-Deafened Adults, the Deaf and Hard of Hearing Consumer Action Network, the National Association of the Deaf, Self Help for Hard of Hearing People, and Telecommunications for the Deaf, Inc.¹ These organizations represent millions of Americans with disabilities who have a vital interest in making sure that the new regulatory structure adopted for Internet-enabled services will meet their communication needs. We thank you for this opportunity to present our views.

Members of the Committee, the last time that the disability community came before you was during consideration of legislation that became the Telecommunications Act of 1996. Sections 251, 255, and 305 of that Act, requiring telecommunications products and services to be accessible by people with disabilities and creating mandates for television captioning, were the culmination of a nearly thirty-year effort to secure equal access by people with disabilities to the telephone network and television programming. We call upon Congress now to carry these mandates forward with respect to IP-enabled services and the equipment used to access those services.

¹ A brief description of each of these organizations is attached.

As new Internet technologies change the way our nation communicates and receives information, people with disabilities may be presented with remarkable opportunities to enhance their independence and productivity . . . but only if legislative safeguards are put into place to ensure that accessibility features are built into IP services and products at the time that they are designed, and only if these mandates follow the principles of universal design to which the 1996 Amendments adhered. People with disabilities wish not to be relegated to obsolete technologies, nor become dependent on adaptive or difficult-to-find “specialized” equipment not needed by the general public. They want an equal opportunity to benefit from the full range of features and functions of mainstream IP products, as these new innovations rapidly become deployed throughout their communities.

Improvements in our nation’s communications technologies over the past ten years already have made a dramatic difference in the lives of people with disabilities. New forms of telecommunications relay services, enhanced mandates for television captioning, and enhanced mainstream technologies, including paging, text messaging and Internet services, have had a liberating effect on the lives of people with disabilities and have opened up new opportunities in and access to employment, education, commerce, entertainment, and government. This Committee is to be thanked for many of these opportunities. Through the various laws that you have passed – legislation mandating hearing aid compatibility, nationwide relay services, and as mentioned earlier, mandates for captioning and general telecommunications access – individuals with disabilities now have greater access than ever to communication and video programming services.

But many of the gains already made will be lost if the needs of these individuals are not again considered as our nation migrates to Internet-enabled technologies. The disability

community is excited about the marvelous and diverse innovations now being developed. The ability to select from among many communication modes – voice, text, or video – can enable users with disabilities who are able to perform some functions but not others, to choose the telecommunication mode best suited to their needs and circumstances. IP-enabled services also have the capacity to enable individuals to use multiple conversational modes during a single conversation, and to even change modes mid-transmission, if the need arises. But just as easily as new IP innovations can offer significant promise, so, too, can they result in isolation and disenfranchisement if they are not designed to be accessible.

History tells us that without clear directives from Congress to provide accessibility, the companies developing these services are unlikely to meet the challenge of doing so. Traditionally, competitive market forces alone have proven insufficient to ensure the accessible design and manufacture of products and services. There are a number of reasons for this. Although it is estimated that nearly 54 million Americans have one or more disabilities – collectively comprising a significant portion of the American marketplace – when divided by disability, it is difficult for any one disability group to create enough pressure to influence market trends. In addition, people with disabilities on average earn lower incomes than the general public, translating to fewer spending dollars capable of impacting competition. Finally, people with disabilities are often deterred from purchasing mainstream communications products and services because they need, but cannot afford, expensive adaptive equipment to make these work for them.

Pressures on company executives to bring profits to their businesses in the highly competitive communications industry can be overwhelming. Diverting resources to incorporate accessible design is risky for one company when access is not required of that

company's competitors. As a consequence, even an internal advocate for disability access within a company may have a tough time selling access initiatives to that company's executives, in the absence of laws requiring accessibility.

The unfortunate truth is that without market pressures, the telecommunications industry has typically failed to address the needs of people with disabilities, except when specifically ordered to do so by Congress or the FCC. For example, in the 1970s and 1980s, when telephone manufacturers began introducing new phones that were no longer accessible to people who used certain hearing aids, consumers needed legislative assistance to restore their lost access. Both the Telecommunications for the Disabled Act of 1982 and the Hearing Aid Compatibility Act of 1988 were needed to order the full restoration of hearing aid compatible phones. Similarly, it took an Act of Congress – Title IV of the Americans with Disabilities Act of 1990 – to require all common carriers to provide telecommunications relay services, ending nearly a century during which deaf, hard of hearing, and speech impaired people scarcely had any access to the telephone network. That Congress understands the need for disability safeguards even when it otherwise seeks to apply a “light regulatory touch” to foster competition and innovation, was also reflected by the 1996 Act's various requirements for telecommunications and television captioning access.

Many of the above legislative mandates rested upon the well-established universal service obligation set forth in the Communications Act of 1934: to “make available, so far as possible to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.” All were undertaken with the recognition that the costs to society of *not* providing communications access to modern innovations – in terms

of unemployment, dependence, and isolation – would far exceed the costs associated with providing such access.

The FCC, too, has needed to take affirmative steps to remedy the failure of market forces to bring about disability access. For example, when the explosive growth of digital wireless telephone services in the 1990s threatened to eliminate TTY and hearing aid users' access to these services, the FCC mandated access solutions. Similarly, multiple FCC reports on the deployment of high speed Internet access have acknowledged that market forces are not enough to guarantee timely access to broadband services for Americans with disabilities. For example, the second of such reports identified persons with disabilities as a category of Americans "who are particularly vulnerable to not having access to advanced services."

So what do people with disabilities want in the new regulatory scheme that will govern the world of IP-enabled services? Congress must act to ensure that IP-enabled products and services offer the same wonderful benefits for people with disabilities that they offer to the general public. Most importantly, mandates are needed to ensure that IP-enabled technologies incorporate features that permit disability access *now*, while these products and services are still being developed, rather than later, when retrofitting them will become burdensome and expensive. If access features are considered and incorporated while a product is being designed, the associated costs become a mere fraction of the overall costs of producing that product for the general public, and the resulting access is far more effective. By contrast, if a product is designed without addressing access needs, it is not only more costly to later revise the product to include that access, but typically the result is not as well-suited to the population in question. For example, the initial failure to incorporate access in digital wireless phones resulted in an eight year delay in making those phones accessible to TTY users, and to this day,

the digital wireless industry has not been able to effectively retrofit these phones for hearing aid users.

Fortunately, the beauty of IP-enabled technologies is that they use software-based solutions that make it easier to implement access features than had been possible with many previous telecommunications technologies. If incorporated early enough, software changes in mainstream products can be tailored to address a broad range of disabilities. And once implemented, most, if not all accommodations are likely to benefit large numbers of individuals without disabilities, the same way that closed captions – originally intended for use by people with hearing loss – are now enjoyed by members of the general public in bars, exercise facilities, and airports.

To achieve the goals of full accessibility by people with disabilities, we make the following recommendations:

1. Extend the Accessibility Safeguards of Sections 255 and 251 of the Communications Act to IP-Enabled services.

It is critical to extend the accessibility safeguards of Sections 255 and Section 251 (requiring telecommunications carriers to install network features, functions or capabilities that comply with Section 255 guidelines) to communications taking place over the Internet. The following are examples of the objectives that such accessibility mandates can achieve:

First, in order to ensure a seamless communications network that is equally accessible to all Americans, IP services must be interoperable and reliable, so that individuals using text or video have the same ability to talk to each other as do people using voice. As providers begin to offer new and improved IP services, each is likely to independently introduce an array of services designed to expand upon our nation's communications networks. But in the effort to get a jump on the marketplace, some companies may accidentally or intentionally ignore the

need to make their products and services interoperable with those of their competitors. The result can be confusion and disorder for consumers, especially those with disabilities, who may find they are able to contact some individuals over a service they have purchased, but not other individuals using the same kind of service.

The deaf community has already seen this occur with respect to instant messaging and video relay services. With video relay service, people who are deaf and hard of hearing can, for the first time in their lives, converse naturally in American Sign Language with hearing people via connections made over the Internet and the PSTN. But because not all video relay services are interoperable with one another, people using this form of communication are not able to enjoy the same seamless access that is available to Americans using voice telephone services. Interoperability of networks and equipment that provide the same functions is not only important for day-to-day affairs; in an emergency or national crisis, all Americans need to be able to obtain assistance, regardless of the communication networks or devices that they use.

Second, within the IP environment, there also needs to be a common protocol for text that is easily combined with other media. At present, multiple industry standards exist for text transmissions over the Internet and for other kinds of text messaging, many of which are not compatible with each other. A single, reliable text standard needs to be supported by all systems, so that text transmissions can get through to their destinations to the same extent as voice transmissions, enabling deaf and hard of hearing people to enjoy the same integrated system of communication that is available to voice users.

Third, IP-enabled services must have electronic interfaces that are accessible to people with disabilities. In the 1990s, the increasing use of graphical user interfaces almost took the power of computers and information networks out of the hands of people who are blind or

visually impaired, because these interfaces could not be read by screen reader software. Similarly, as traditional telephone and television technologies are replaced by IP-enabled technologies, many applications are becoming available only through graphical, touch screen, “soft-button” or “on-screen” interfaces that are not accessible to people who do not have the ability to see. Last week, this Committee watched demonstrations of innovative IPTV systems that will allow viewers to scroll through various channels, access personalized Internet services, and make the TV experience truly interactive. The advantages of accessing multiple functions – telephony, TV, Internet – through a single piece of equipment are enticing to people with disabilities, who may benefit from having a single connection for data, video, and voice connections. But blind people need to know which channel is on, ways to choose among menu options, how to turn on accessibility features, and how to operate controls independently. The only means of accessing these various features should not be through inaccessible on-screen menus. Similarly, blind people may not be able to use IPTV technologies if the remote controls used to operate these devices have “soft dynamic buttons” that change with each press of a button. Touch-screens, too, can pose problems: first, an individual cannot feel *where* the buttons are, and second, he or she cannot identify *what the buttons do* because they may change as the screens change.

Mandates are needed to require IP-enabled service providers to provide multiple – or redundant – means of controlling applications on IP devices. If a device’s operations require one sense or physical ability – for example, hearing or touch – the user should be able to use other senses or abilities to control the equipment, to prevent creating new disability barriers.

2. Improve Enforcement of Accessibility Obligations.

Access obligations need not only be in place; they need to be properly enforced.

Informal FCC complaints have proven to be ineffective as a means of enforcing compliance with rights associated with Section 255, closed captioning, and other disability issues. Over the past decade, only two formal FCC accessibility complaints have been filed, largely because of the burden and expense associated with filing one of these complaints. Reform of the Communications Act should add a private right of action allowing people with disabilities to enforce their rights to accessibility under Section 255, as well as any new accessibility mandates. This right properly exists for various sections of the Americans with Disabilities Act, the nation's primary statute mandating an end to discrimination on the basis of disability.

3. Reform Universal Service Programs to Address the Needs of People with Disabilities in an IP-Enabled Environment.

At present, only common carriers providing telephone voice transmission services are required to contribute to intra- and inter-state funds supporting telecommunications relay services. As we migrate away from traditional telephone services, contributions from IP-enabled services providers are sorely needed to both sustain the viability of these services, and to distribute costs fairly among all subscribers of communication services. Similarly, IP providers should have to contribute to other universal service (USF) funds that are used to support the Lifeline and Link-Up programs. Because the incidence of unemployment is so high among people with disabilities, it is more than likely that this population would also be affected by any cutbacks in those programs.

Conversely, USF monies should also be available to support IP services and specialized communications devices that may be required by people with disabilities. Some deaf individuals no longer purchase PSTN service, having already discarded their TTYs for

webcams and computers that enable video communications. People with disabilities that rely exclusively on IP-enabled communication technologies should be permitted to choose whether they want universal service subsidies that go directly to end users – e.g., through the Lifeline or Link-up programs – to be used as partial payment for their broadband service and equipment, rather than payment for PSTN service.

4. Video Access: Extend Obligations That Currently Apply to Video Program Providers to IPTV Providers; Restore Video Description Rules.

The closed captioning mandates enacted in the 1996 Amendments have successfully brought television programming to millions of deaf and hard of hearing Americans. Just as the FCC extended these mandates to services and equipment needed for digital television programming, mandates are critically needed to ensure the continued benefits of captioning as IPTV technologies take center stage.

In addition, as Congress goes about reforming the Communications Act, we request that it restore the FCC's rules on video description. Video description is a technology that inserts narrative verbal descriptions into the natural pauses of television programs to enhance television accessibility for blind and visually impaired persons. Although, in July 2000, the FCC tried to use authority assigned to it in the 1996 Telecommunications Act to promulgate rules on video description, that authority was deemed insufficient to support those rules by the U.S. Court of Appeals for the D.C. Circuit in November of 2002. While a few television providers still voluntarily provide this form of programming access, these rules need to be restored to provide blind and visually impaired Americans with greater access to television programming.

5. States need to be able to retain some authority over telecommunications relay programs.

Under Section 225 of the Communications Act, states are able to receive certification from the FCC to operate their own relay programs. Several of these locally operated programs have been directly responsive to the needs of their residents in ways that cannot be matched by a federal agency located across the country. Considerable innovation and improvements in relay services, including video relay services and speech-to-speech services for people with speech impairments, originated through state relay programs in response to the needs of their populations. If the jurisdiction for IP-related services generally becomes federal, states need to have the option of retaining oversight over their own relay programs, even where these programs utilize IP-enabled services.

Conclusion

Only Congress can ensure that people with disabilities – including the rapidly growing population of senior citizens whose advancing years often bring reduced vision and hearing – are not left behind as our nation migrates from legacy technologies to more versatile and innovative Internet-enabled methods of communication. For people with disabilities, communication access means the ability to compete on an equal basis for employment opportunities, benefit from educational programs, make sound financial and medical decisions, fulfill civic duties, and actively contribute to society as productive participants. Those who have the ability to obtain and use information have the power to make choices and enhance their opportunities for self-sufficiency. Mandates are critically needed to preserve the extraordinary gains achieved by more than two decades of Congressional efforts to promote full telecommunications access. We look forward to working with your Committee to carry this progress forward into the IP-enabled world.

Testimony of Karen Peltz Strauss
Description of Organizations

Testimony Presented on Behalf of:

Communication Services for the Deaf – CSD is a private, non-profit organization of, by, and for deaf and hard of hearing people that provides direct assistance through education, counseling, training, communication assistance, and telecommunications relay services, to more than three million people with hearing loss in more than thirty states across the nation. Established in 1975, CSD’s objective has always been to increase the communication, independence, productivity, and self-sufficiency of all individuals who are deaf and hard of hearing.

Alliance for Public Technology – APT is a nonprofit organization of public interest groups and individuals, working together to foster broad access to affordable, usable information and communications services and technology, for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to function in ways they otherwise could not, creating opportunities for jobs and economic advancement, making government more responsive to all citizens and simplifying access to communications technology.

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Testimony Endorsed by:

American Association of People with Disabilities – AAPD is the largest cross-disability membership organization in the U.S. With more than 110,000 members across the country, AAPD is a national nonpartisan non-profit organization advocating for the political and economic empowerment of the more than 54 million children and adults with disabilities in America. AAPD promotes policies that support the goals of the Americans with Disabilities Act: equality of opportunity, full participation, independent living, and economic self-sufficiency.

American Foundation for the Blind – AFB is a national nonprofit whose mission is to ensure that the ten million Americans who are blind or visually impaired enjoy the same rights and opportunities as other citizens. AFB promotes wide-ranging, systemic change by addressing the most critical issues facing the growing blind and visually impaired population – employment, independent living, literacy, and technology. In addition to its New York City headquarters, the AFC maintains 4 national centers in cities across the U.S. and a governmental relations office in Washington, D.C.

Association of Late-Deafened Adults – Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened

people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society.

Deaf and Hard of Hearing Consumer Advocacy Network – Established in 1993, DHHCAN serves as the national coalition of organizations representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. The member organizations of DHHCAN include the American Association of the Deaf-Blind, the American Deafness and Rehabilitation Association, the Association of Late-Deafened Adults, the American Society for Deaf Children, the Conference of Educational Administrators of Schools and Programs for the Deaf, Communication Service for the Deaf, Deaf Seniors of America, Gallaudet University, Gallaudet University Alumni Association, National Association of the Deaf, National Black Deaf Advocates, National Catholic Office of the Deaf, Registry of Interpreters for the Deaf, Telecommunications for the Deaf, Inc., USA Deaf Sports Federation, and The Caption Center/WGBH.

National Association of the Deaf – Established in 1880, the NAD is the oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of 28 million deaf and hard of hearing individuals in the U.S. The mission of the NAD is to promote, protect, and preserve the rights and quality of life of deaf and hard of hearing individuals in America. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights and technical assistance, policy development and research, and youth leadership development.

Self Help for Hard of Hearing People – SHHH is the nation's foremost consumer organization representing people with hearing loss. SHHH's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The SHHH mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. SHHH provides cutting edge information to consumers, professionals and family members through their website, www.hearingloss.org, their award-winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. SHHH impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

Telecommunications for the Deaf, Inc. – Established in 1968, TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind.

BIOGRAPHY OF KAREN PELTZ STRAUSS

Ms. Peltz Strauss has worked on legal and policy issues concerning the rights of people with disabilities for more than two decades. She is presently a legal consultant to national relay service providers, consumer groups, and research institutes on matters concerning communications and technology access. In addition, she currently serves on the Board of Directors of the Alliance for Public Technology. In 2002-03, Ms. Peltz Strauss was the Powrie V. Doctor Chair of Deaf Studies at Gallaudet University, where she began writing a book documenting the history and scope of the telecommunications access movement by the deaf and hard of hearing community in America. (scheduled publication: winter 2006)

From 1999-2001, Ms. Peltz Strauss served as Deputy Bureau Chief of the Federal Communications Commission's Consumer Information Bureau, where she managed the Commission's consumer and disability access programs and policies. In that position, she oversaw the release of numerous rules on telecommunications accessibility, as well as the creation of the Commission's first Disabilities Rights Office and its first federal advisory committee dedicated to consumer and disability-related telecommunications issues.

Before joining the FCC, Ms. Peltz Strauss spent many years spearheading national policy on matters concerning telecommunications access by individuals with disabilities. First as Supervising Attorney at Gallaudet University's National Center for Law and Deafness and then as both Legal Counsel for Telecommunications Policy for the National Association of the Deaf and Telecommunications Legislative Consultant for the Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing, Ms. Peltz Strauss co-authored and guided efforts to achieve passage of several pieces of federal legislation. These included Sections 255 and 305 of the Telecommunications Act of 1996 (requiring telecommunications access and television captioning), Title IV of the Americans with Disabilities Act of 1990, (mandating relay services), the Decoder Circuitry Act of 1990 (mandating caption decoders in television sets), and the Hearing Aid Compatibility Act of 1988 (mandating hearing aid compatible telephones). Ms. Peltz Strauss has served numerous federal advisory committee appointments, including a Presidential appointment to the Federal Advisory Committee on the Public Interest Obligations of Digital Broadcasters (the "Gore Commission") and the Telecommunications Access Advisory Committee which developed the first Section 255 guidelines. Ms. Peltz Strauss holds a Juris Doctor from the University of Pennsylvania Law School and a Masters of Law from the Georgetown University Law Center.